IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, ex rel. the State Engineer, Plaintiff, v. ROMAN ARAGON, et al., Defendants.	No. 69cv07941-BB Rio Chama Adjudication **Pueblo Claims Subproceeding 1**

UNITED STATES' SUBPROCEEDING COMPLAINT

Consistent with the *Scheduling Order on Pueblo Claims* entered by the Special Master on November 3, 2004 [Docket No. 7639], the United States of America, by and through its undersigned attorney, and in its capacity as trustee for the benefit of Ohkay Owingeh (Pueblo of San Juan), hereby submits its subproceeding complaint for an adjudication of water rights based on past or present uses of waters of the Rio Chama stream system on lands of Ohkay Owingeh.

1. Ohkay Owingeh is a federally recognized Indian tribe and a sovereign nation owning lands within the geographic scope of this adjudication. Ohkay Owingeh has made use of the waters of the Rio Chama stream system since time immemorial.

2. The sovereign right of Ohkay Owingeh to use and control water bordering, or running through or over, its lands has never been extinguished by any other sovereign.

3. The priority of Ohkay Owingeh's right to use water, including the specific uses of water the United States seeks to adjudicate by this subproceeding complaint, is aboriginal, also known as time immemorial or first priority.

4. Once Ohkay Owingeh's water rights are quantified by judicial decree, the Pueblo has the right, under federal law, to use such rights for any purpose.

Impoundments

5. Ohkay Owingeh has in the past used, or is at present using, for the indicated purposes, the impoundments of surface water identified in Table 1. The United States claims for the benefit of Ohkay Owingeh the right to maintain each impoundment at its described location and dimensions, and to fill each impoundment up to the indicated capacity whenever the stated source of supply is available, and to use the impounded water for the purposes indicated in Table 1. The source of supply for all impoundments, except SJI-10, is surface runoff. SJI-10 fills from groundwater seepage as well as surface runoff.

Table 1. Impoundments on Ohkay Owingeh (formerly San Juan Pueblo) within the Rio Chama Stream System

	Location of Impoundment				Point of Diversion		Dimensions			Purpose of Use
					NM State Plane Coordinates, Central Zone, 1983 NAD feet					
Impoundment Identifier	**US Rectangular Surveys Description according to the New Mexico Principle Meridian**				**Northing**	**Easting**	**Maximum pool area**	**Depth of Impoundment***	**Impoundment Capacity****	
	Fraction of Section	Section	Township	Range	feet	feet	acres	feet	Acre-feet	
SJI-01	NW1/4, SE 1/4, SE 1/4	4	21 North	8 East	1,849,326	1,684,721	0.80	3.4	1.63	Livestock and wildlife watering; ground water recharge
SJI-02	SW 1/4, NE 1/4, NE 1/4	4	21 North	8 East	1,848,581	1,684,907	1.12	8.3	5.58	Livestock and wildlife watering; ground water recharge
SJI-03	SE 1/4, NW 1/4, NW 1/4	4	21 North	8East	1,848,792	1,685,462	0.49	9.7	2.85	Livestock and wildlife watering; ground water recharge
SJI-04	SE 1/4, NW 1/4, SW 1/4	4	21 North	8 East	1,847,639	1,685,391	3.31	8.8	17.48	Livestock and wildlife watering; ground water recharge
SJI-05	SE 1/4, NE 1/4, SW 1/4	4	21 North	8 East	1,847,718	1,686,292	0.60	5.3	1.91	Livestock and wildlife watering; ground water recharge
SJI-06	NE 1/4, NE 1/4, NW 1/4	9	21 North	8 East	1,846,026	1,686,645	0.62	11.1	4.13	Livestock and wildlife watering; ground water recharge
SJI-07	SE 1/4, SE 1/4, SW 1/4	4	21 North	8 East	1,846,546	1,686,879	0.20	2.6	0.31	Livestock and wildlife watering; ground water recharge
SJI-08	SW 1/4, NW 1/4, SE 1/4	10	21 North	8 East	1,842,561	1,688,343	0.74	8.7	3.86	Livestock and wildlife watering; ground water recharge
SJI-09	NE 1/4, NE 1/4, SE 1/4	9	21 North	8 East	1,845,431	1,687,024	1.59	4.1	3.91	Livestock and wildlife watering; ground water recharge
SJI-10	NE 1/4, NE 1/4, SW 1/4	8	21 North	8 East	1,845,431	1,681,235	0.74	3.8	1.69	Livestock and wildlife watering
Total							10.21		43.35	

***The Depth of Impoundment values for SJI-03 and SJI-06 are estimated because the impoundments are silted up. This estimate is determined by the difference between the downstream toe of the dam measurement and spillway measurement.

**Capacity calculated by multiplying maximum pool area by depth, and by a factor of 0.6, used to account for the irregularity of pond geometry.

Wells

6. Ohkay Owingeh has in the past used, or is at present using, for the indicated purposes, the wells identified in Table 2. The United States claims for the benefit of Ohkay Owingeh the right to divert and deplete from W-01, the Chama Windmill, one-half (.5) acre foot per year for livestock and wildlife watering purposes. For W-02, the Salazar Well #1, the United States claims the right to divert and deplete one (1) acre foot per year for household and other domestic purposes, and likewise for W-03, the Salazar Well # 2, the United States claims the right to divert and deplete one (1) acre foot per year for household and other domestic purposes.

Table 2. Wells on Ohkay Owingeh (formerly San Juan Pueblo) within the Rio Chama Stream System

Well Identifier	Well Name	Location NM State Plane Coordinates [1]		Location – US Rectangular Surveys				Well Use
		Northing	Easting	Fraction of Section	Section	Township	Range	
W-01	Chama Windmill	1,848,630	1,685,220	SE ¼, NW ¼, NW ¼	4	21 North	8 East	Livestock & Wildlife Watering
W-02	Salazar Well #1	1,839,440	1,688,700	NW ¼, SW ¼ ,NE ¼	15	21 North	8 East	Household and other Domestic
W-03	Salazar Well #2	1,839,270	1,688,770	NW ¼, SW ¼, NE ¼	15	21 North	8 East	Household and other Domestic

[1] Coordinates are estimated to the nearest 10 feet.

Irrigated Lands

7. Ohkay Owingeh has in the past irrigated, or is at present irrigating, the tracts of farm land under ditch shown on Map 1 and identified in Table 3, totaling 300.75 irrigated acres.[2] Some of these tracts may also have been irrigated by others in trespass on Ohkay Owingeh lands. These tracts are served by the ditches as indicated in Table 3. All of the ditches divert from the Rio Chama, at the diversion points indicated in Table 4. The United States anticipates that the methodology for determining the diversion and depletion amounts for irrigated lands within the scope of this adjudication will be determined by the Court in a future unified proceeding. However, for purposes of this Subproceeding Complaint, the United States asserts that irrigated tracts under ditch on Ohkay Owingeh lands require a diversion of 5.94 acre feet per year per acre from the Rio Chama and a depletion of 2.08 acre feet per year per acre, for a total diversion requirement of 1,786.46 acre feet per year and a total depletion of 625.56 acre feet per year.[3]

Table 3. Irrigated Fields Under Ditch on Ohkay Owingeh Lands Served by Diversions From the Rio Chama Stream System

Tract	Irrigated Acres	Location – US Rectangular Surveys				Ditch Serving Tract
		Fraction of Section (Tract occupies a portion of each 10 acres identified)	Sec.	Twn.	Rng	See Table 4 for Location and Points of Diversion associated with each ditch
1	1.22	NE1/4, SW1/4, SW1/4 SE1/4, NW1/4, NW1/4	5	21 N	8 E	Chamita

[2] Differences between the acreages claimed in Table 3 and those claimed for similar tracts in the United States' March 4, 1997 preliminary statement of claims are primarily due to improved boundary description data and new technology available for the interpretation of aerial photography.

[3] The difference between this water duty and that claimed in the United States' March 4, 1997 preliminary statement of claims is primarily due to new data concerning climate and the appropriate crop mix.

Tract	Irrigated Acres	Location – US Rectangular Surveys				Ditch Serving Tract
2	1.98	SE1/4, NW1/4, NW1/4 SE1/4, NW1/4, NE1/4	5	21 N	8 E	Chamita
3	6.00	SW1/4, NE1/4, SE1/4 SE1/4, NW1/4, SW1/4 SE1/4, SW1/4, NW1/4	5	21 N	8 E	Hernandez
4	2.02	SE1/4, SW1/4, NE1/4 SE1/4, SW1/4, SE1/4	5	21 N	8 E	Chamita
5	24.91	SW1/4, SE1/4, NE1/4 SE1/4, SW1/4, NW1/4 SW1/4, SE1/4, SE1/4 SE1/4, SW1/4, SW1/4 SE1/4, SW1/4, SE1/4 NW1/4, NW1/4, NW1/4	5	21 N	8 E	Hernandez
6	12.58	SE1/4, NE1/4, NE1/4, SE1/4, NE1/4, SE1/4 SW1/4, NW1/4, NW1/4 SW1/4, NW1/4, SW1/4	8 9	21 N	8 E	Chamita
7	0.52	SW1/4, NW1/4, SW1/4	9	21 N	8 E	Chamita
8	1.43	SW1/4, SW1/4, SE1/4 NW1/4, NW1/4, NE1/4	9 16	21 N	8 E	Chamita
9	1.08	SW1/4, SE1/4, SW1/4 NW1/4, NE1/4, NW1/4	9 16	21 N	8 E	Chamita
10	1.36	NW1/4, NE1/4, NW1/4 NW1/4, NE1/4, SW1/4	16	21 N	8 E	Chamita

Tract	Irrigated Acres	Location – US Rectangular Surveys				Ditch Serving Tract
11	196.96	SE1/4, SE1/4, NE1/4 SE1/4, SE1/4, SE1/4 SW1/4, SW1/4, SW1/4 SW1/4, SW1/4, SE1/4 NE1/4, NE1/4, NW1/4 NE1/4, NE1/4, NE1/4 NE1/4, NE1/4, SW1/4 NE1/4, NE1/4, SE1/4 NE1/4, SW1/4, NE1/4 NE1/4, SW1/4, SE1/4 NE1/4, SE1/4 SE1/4, NE1/4, NW1/4 SE1/4, NE1/4, NE1/4 NW1/4, NW1/4 NW1/4, NE1/4, NW1/4 NW1/4, NE1/4, SW1/4 NW1/4, SW1/4 NW1/4, SE1/4, NW1/4	9 10 16 15	21 N	8 E	Chamita
12	5.77	NE1/4, SW1/4, NE1/4 NE1/4, SW1/4, SE1/4	16	21 N	8 E	Chamita
13	1.68	SE1/4, NW1/4, NW1/4 SE1/4, NW1/4, NE1/4 SE1/4, NW1/4, SE1/4	16	21 N	8 E	Chamita
14	40.88	NW1/4, SE1/4, NW1/4, NW1/4, SE1/4, NE1/4 NW1/4, SE1/4, SW1/4 NW1/4, SW1/4, SE1/4 SW1/4, NW1/4 SW1/4, NE1/4. NW1/4 SW1/4, NE1/4, SW1/4 SW1/4, SE1/4, NW1/4 SW1/4, SW1/4, NE1/4	15	21 N	8 E	Chamita
15	0.79	NW1/4, NW1/4, NW1/4 NW1/4, NW1/4, SW1/4	22	21 N	8 E	Salazar
16	0.27	NW1/4, NW1/4, SW1/4	22	21 N	8 E	Salazar
17	1.30	NW1/4, SW1/4, SE1/4 SW1/4, NW1/4, NE1/4	22	21 N	8 E	Salazar
Total:	300.75					

Table 4. Points of Diversion on the Rio Chama for Irrigation Ditches that serve Fields on Ohkay Owingeh (formerly San Juan Pueblo)

Ditch Name	Northing*	Easting*
Salazar	1,842,450	1,681,902
Hernandez	1,849,878	1,676,938
Chamita	1,850,008	1,677,060

(*NM State Plane Coordinates, Central Zone, 1983 NAD feet)

8. Ohkay Owingeh has in the past diverted surface water within the Rio Chama Stream System to irrigate the traditional agricultural features indicated in Table 5 and on Map 2 on Ohkay Owingeh lands. Points of diversion for these traditional agricultural features are located at the coordinates, and within the ¼, ¼, ¼, sections, indicated in Table 6.

Table 5. Traditional Irrigated Agriculture Features on Ohkay Owingeh Lands Served by Diversions Within the Rio Chama Stream System:

Service Area ID	Point of Diversion ID	Acres	**TWN.	RNG.	SEC.	QQSEC.	Water Source
1	1,2,11,12	0.38	21N	08E	10	NWSW	Unnamed Arroyo
2	13,14	0.18	21N	08E	10	NWSW	Unnamed Arroyo
3	10,15,16,17	0.15	21N	08E	10	NWSW	Unnamed Arroyo
			21N	08E	9	NESE	Unnamed Arroyo
4	9	0.02	21N	08E	10	SWNW	Unnamed Arroyo
5	25	0.14	21N	08E	9	SENE	Unnamed Arroyo
6	26	0.11	21N	08E	9	NENE	Unnamed Arroyo
7	18-24	0.54	21N	08E	9	SENE	Unnamed Arroyo
			21N	08E	9	NESE	Unnamed Arroyo
8	29,30,31	0.11	21N	08E	9	SENE	Unnamed Arroyo
9	26,28	0.01	21N	08E	9	NENE	Unnamed Arroyo
10	35-39,77,78	0.08	21N	08E	9	NENE	Unnamed Arroyo
11	35,39,77	0.02	21N	08E	9	NENE	Unnamed Arroyo
12	40,41,42	0.01	21N	08E	9	NENE	Unnamed Arroyo
13	3,43-52	0.56	21N	08E	9	NWNE	Unnamed Arroyo
14	7,53	0.08	21N	08E	4	SESW	Unnamed Arroyo
15	54	0.01	22N	08E	33	SWSW	Unnamed Arroyo
16	8	0.08	22N	08E	33	SWSW	Unnamed Arroyo
17	55-60	0.39	22N	08E	33	SWSW	Unnamed Arroyo

Service Area ID	Point of Diversion ID	Acres	**TWN.	RNG.	SEC.	QQSEC.	Water Source
			21N	08E	4	NWNW	Unnamed Arroyo
18	65	0.01	21N	08E	5	SENE	Unnamed Arroyo
19	66	0.00	21N	08E	5	SENE	Unnamed Arroyo
20	67	0.01	21N	08E	5	SENE	Unnamed Arroyo
21	68-70	0.20	21N	08E	5	SENE	Unnamed Arroyo
22	6	0.06	21N	08E	5	SENE	Unnamed Arroyo
23	71	0.02	21N	08E	5	SWNE	Unnamed Arroyo
24	73-74	0.13	21N	08E	5	SWNE	Unnamed Arroyo
25	4,81	0.23	21N	08E	10	NWSW	Unnamed Arroyo
26	80	0.02	21N	08E	10	NWSW	Unnamed Arroyo
27	32,33,34	0.02	21N	08E	9	NENE	Unnamed Arroyo
28	75	0.02	21N	08E	5	SENW	Unnamed Arroyo
29	76	0.01	21N	08E	5	SENW	Unnamed Arroyo
30	79	0.03	21N	08E	10	SWNW	Unnamed Arroyo
31	27	0.01	21N	08E	4	SWNW	Unnamed Arroyo
32	72	0.01	21N	08E	5	NWNE	Unnamed Arroyo
33	5,61-64	0.05	21N	08E	4	SWNW	Unnamed Arroyo
	Total Acres	**3.70**					
** Based on PLSS data digitized by the Bureau of Land Management at the 1:24,000 scale pending revision of the BLM GCBD database.							

Table 6. Points of Diversion Within the Rio Chama Stream Sytem for Traditional Irrigated Agriculture Features on Ohkay Owingeh Lands:

Point of Diversion ID	Northing*	Easting*	**TWN.	RNG.	SEC.	QQSEC.
1	1842962	1688797	21N	08E	10	NWSW
2	1842958	1688785	21N	08E	10	NWSW
3	1845492	1686264	21N	08E	9	NWNE
4	1843630	1688210	21N	08E	10	NWSW
5	1849445	1682539	21N	08E	4	SWNW
6	1850082	1681129	21N	08E	5	SENE
7	1847151	1684354	21N	08E	4	SESW
8	1852117	1683305	22N	08E	33	SWSW
9	1843796	1687832	21N	08E	10	SWNW
10	1843687	1687735	21N	08E	10	NWSW
11	1842947	1688818	21N	08E	10	NWSW
12	1842843	1688895	21N	08E	10	NWSW
13	1843499	1687802	21N	08E	10	NWSW
14	1843484	1687753	21N	08E	10	NWSW

Point of Diversion ID	Northing*	Easting*	**TWN.	RNG.	SEC.	QQSEC.
15	1843742	1687654	21N	08E	10	NWSW
16	1843736	1687668	21N	08E	10	NWSW
17	1843724	1687686	21N	08E	10	NWSW
18	1843773	1687467	21N	08E	9	SENE
19	1843821	1687473	21N	08E	9	SENE
20	1843843	1687456	21N	08E	9	SENE
21	1843850	1687424	21N	08E	9	SENE
22	1843898	1687411	21N	08E	9	SENE
23	1843920	1687401	21N	08E	9	SENE
24	1843798	1687478	21N	08E	9	SENE
25	1844042	1687251	21N	08E	9	SENE
26	1845086	1686827	21N	08E	9	NENE
27	1849353	1682421	21N	08E	4	SWNW
28	1845177	1686817	21N	08E	9	NENE
29	1844875	1686503	21N	08E	9	SENE
30	1844856	1686505	21N	08E	9	SENE
31	1844899	1686503	21N	08E	9	SENE
32	1845179	1686970	21N	08E	9	NENE
33	1845214	1686945	21N	08E	9	NENE
34	1845203	1686975	21N	08E	9	NENE
35	1845451	1686513	21N	08E	9	NENE
36	1845381	1686463	21N	08E	9	NENE
37	1845353	1686457	21N	08E	9	NENE
38	1845335	1686461	21N	08E	9	NENE
39	1845438	1686540	21N	08E	9	NENE
40	1845222	1686460	21N	08E	9	NENE
41	1845196	1686447	21N	08E	9	NENE
42	1845183	1686441	21N	08E	9	NENE
43	1845467	1686205	21N	08E	9	NWNE
44	1845474	1686231	21N	08E	9	NWNE
45	1845481	1686243	21N	08E	9	NWNE
46	1845499	1686259	21N	08E	9	NWNE
47	1845511	1686245	21N	08E	9	NWNE
48	1845534	1686227	21N	08E	9	NWNE
49	1845515	1686119	21N	08E	9	NWNE
50	1845524	1686094	21N	08E	9	NWNE
51	1845558	1686061	21N	08E	9	NWNE
52	1845642	1686076	21N	08E	9	NWNE
53	1847132	1684368	21N	08E	4	SESW
54	1852189	1683351	22N	08E	33	SWSW
55	1851748	1683228	22N	08E	33	SWSW
56	1851738	1683220	22N	08E	33	SWSW
57	1851674	1683226	21N	08E	4	NWNW
58	1851752	1683240	22N	08E	33	SWSW

Point of Diversion ID	Northing*	Easting*	**TWN.	RNG.	SEC.	QQSEC.
59	1851831	1683258	22N	08E	33	SWSW
60	1851863	1683254	22N	08E	33	SWSW
61	1849449	1682563	21N	08E	4	SWNW
62	1849447	1682552	21N	08E	4	SWNW
63	1849430	1682536	21N	08E	4	SWNW
64	1849415	1682531	21N	08E	4	SWNW
65	1849280	1682333	21N	08E	5	SENE
66	1849236	1682275	21N	08E	5	SENE
67	1849268	1682094	21N	08E	5	SENE
68	1849315	1681794	21N	08E	5	SENE
69	1849274	1681818	21N	08E	5	SENE
70	1849331	1681776	21N	08E	5	SENE
71	1850045	1680925	21N	08E	5	SWNE
72	1850458	1680717	21N	08E	5	NWNE
73	1849449	1680705	21N	08E	5	SWNE
74	1849414	1680642	21N	08E	5	SWNE
75	1850072	1679647	21N	08E	5	SENW
76	1849969	1679590	21N	08E	5	SENW
77	1845409	1686566	21N	08E	9	NENE
78	1845421	1686553	21N	08E	9	NENE
79	1843847	1687889	21N	08E	10	SWNW
80	1843707	1688320	21N	08E	10	NWSW
81	1843491	1688208	21N	08E	10	NWSW
* NM State Plane Coordinates, Central Zone, 1983 NAD feet						
** Based on PLSS data digitized by the Bureau of Land Management at the 1:24,000 scale pending revision of the BLM GCBD database.						

The total irrigated acreage within these features is 3.70 acres. The United States anticipates that the methodology for determining the diversion and depletion amounts for irrigated lands within the scope of this adjudication will be determined by the Court in a future unified proceeding. However, for purposes of this Subproceeding Complaint, the United States asserts that the specified areas of irrigated traditional agricultural features on Ohkay Owingeh lands require a diversion of 3.26 acre feet per year per acre and a depletion of 1.63 acre feet per year per acre, for a total diversion requirement of 12.06 acre feet per year and a total depletion of 6.03 acre feet per year.

Religious and Ceremonial Use

Consumptive Use

9. The United States claims for the benefit of Ohkay Owingeh the right to divert and consume *de minimis* quantities of water to be used in the ancient and continuing religious and ceremonial practices of Ohkay Owingeh. The claim is for ceremonial diversions of less than 100 gallons per event, which may be diverted from any surface water body within the Ohkay Owingeh lands.

Instream Flow Use

10. Ohkay Owingeh requires riparian species and nonconsumptive use of instream flows in the Rio Chama for its ancient and continuing religious and ceremonial practices. For the benefit of Ohkay Owingeh, the United States claims a right to monthly flows averaging not less than 37 cubic feet per second (c.f./s.) in the Rio Chama, measured at the Rio Chama Near Chamita Gage, for these purposes.

11. Ohkay Owingeh requires flows in the Chamita Ditch for certain religious and ceremonial purposes at various times. For these purposes, the United States claims for the benefit of Ohkay Owingeh a right to flows in the Chamita Ditch of 4 c.f./s. during the month of June, and 2 c.f./s. during other months of the irrigation season.

WHEREFORE, the United States of America demands entry of a judgment decreeing:

1. Ohkay Owingeh, and the United States for the benefit of the Ohkay Owingeh, have an aboriginal priority right to capture and impound surface runoff, including arroyo flow, at the locations of impoundments SJI-1 through SJI-9, and surface

runoff and groundwater seepage at the location of impoundment SJI-10, to fill and refill said impoundments to their capacity, and to use such impounded waters for any purpose;

2. Ohkay Owingeh, and the United States for the benefit of the Ohkay Owingeh, have an aboriginal priority right to divert and deplete one-half (.5) acre foot of water per year from well W-01 and one (1) acre foot of water per year from each of wells W-02 and W-03, for a total groundwater diversion and depletions of 2.5 acre feet per year, and to use such waters for any purpose;

3. Ohkay Owingeh, and the United States for the benefit of the Ohkay Owingeh, have an aboriginal priority right to divert 1,786.46 acre feet of water per year from the Rio Chama and to deplete 625.56 acre feet of water per year to irrigate tracts 1 through 17, as shown on Map 1 and described in Table 3, or for any other purpose;

4. Ohkay Owingeh, and the United States for the benefit of Ohkay Owingeh, have an aboriginal priority right to divert 12.06 acre feet of water per year from unnamed arroyos and to deplete 6.03 acre feet of water per year to irrigate the traditional agricultural features shown on Map 2, and described in Table 5, or for any other purpose;

5. Ohkay Owingeh has the right, with aboriginal priority, to make ceremonial diversions and consumption of water of less than 100 gallons per event, which may be diverted from any surface water body within the Ohkay Owingeh lands at times within the sole discretion of Ohkay Owingeh;

6. Ohkay Owingeh, and the United States for the benefit of Ohkay Owingeh, have an aboriginal priority right to instream flows in the Rio Chama of not less than a monthly average of 37 c.f./s, measured at the Rio Chama Near Chamita Gauge,

and to instream flows in the Chamita Ditch of not less than 4 c.f./s. during the month of June, and 2 c.f./s. during other months of the irrigation season; and

7. Such other relief as the Court deems just and proper.

Dated: March 30, 2007

Electronically Filed,

/s/Bradley S. Bridgewater

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COUNSEL FOR THE UNITED STATES

Certificate of Service

I HEREBY CERTIFY that, on March 30, 2007, I filed the foregoing *United States' Subproceeding Complaint* electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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